IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 10135 of 2004

Between:

Andhra Pradesh Public Service Commission,

represented by its Secretary, Gruhakalpa,

Nampally, Hyderabad.

..... PETITIONER

AND

A.Venkat Rao, s/o. A.Krishna Rao,

R/o. Tekkali, Srikakulam District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction especially one in the nature of Writ of Certiorari calling for the records relating to the order dated 15.7.2003 in O.A.No.3982 of 1997 passed by the A.P. Administrative Tribunal and set aside the same.

Standing Counsel for the Petitioner: MR.M.VIJAY KUMAR

Counsel for the Respondent: MR.M.P.CHANDRAMOULI

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed by Andhra Pradesh Public Service Commission (APPSC) assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.3982 of 1997, dated 15.7.2003.

2. The respondent was the applicant before the Tribunal. He appeared for the competitive examination for appointment under Group-III Services, which was notified in Notification in No.1/1992. Even though the respondent got 255 marks, he was not given appointment, but on the other hand those who got less marks, they were given appointment. Thereupon he made a representation to APPSC, but in vain. Therefore he filed the above OA before the Tribunal. In the counter filed by APPSC it is only stated that in view of the verdict of the Supreme Court in SLP.Nos.6395 and 1346 of 1994, weightage of 5% of marks for Telugu Medium candidates have been withdrawn and if those marks are reduced, the respondent herein will get only 240 marks and not 255 and therefore on that ground he is not entitled for selection and appointment. The Tribunal, however, went into the aspect whether the respondent would fall in the local category or non-local category and arguments appears to have been advanced on the aspect that since the respondent failed to submit the Certificate relating to his local status, his case was rejected. The Tribunal, however, did not agree with the contention of APPSC and allowed the OA by observing as follows:

> "It is not in dispute that the applicant studied from V to X at Sompeta. He studied Intermediate (2 years) at Government Junior College, Sompeta (7 years). This is enough for treating a candidate as local candidate. He applied for the said post as a local candidate. In view of the above, treating the applicant as non-local candidate does not arise. Coming to the aspect of getting marks, the Secretary has to fix a day to show the marks sheet to

the applicant and if the applicant has secured more marks than the last selected candidate, the case of the applicant has to be considered along with his immediate junior and he should be given appointment within a period of two months from the date of receipt of a copy of this order. If the applicant is so given appointment, his services should be reckoned from the date appointment of his immediate junior.

The OA is disposed of accordingly with the above directions".

Against the said order, the present Writ Petition has been filed by APPSC.

3. The learned Standing Counsel for APPSC submits that the petitioner's case was not considered as he did not submit the Certificate required to be submitted at the time of filing the application and therefore the order of the Tribunal is illegal and contrary to law.

4. At the threshold we are not impressed with the contention raised by the learned Standing Counsel. In the counter filed by APPSC there is no mention with regard to local and non-local issue. The following para in the counter is relevant, which is extracted below:

"1. It is respectfully submitted that the applicant had applied for the recruitment to the post of Co-operative Inspectors under Group-III Services, 1992, and appeared for the examination with Regd.No.10009155.

2. It is respectfully submitted that the candidate has secured 255 marks including 5% weightage marks to Telugu Medium Candidates out of 300 marks.

3. It is respectfully submitted that as per the verdict of the Supreme Court in SLP.No.6395 and 1346 of 1994, weightage of 5% of marks for Telugu Medium Candidates have been withdrawn and due to this reason the marks of the candidate have come down to 240 only (i.e., after eliminating weightage of 15 marks).

4. It is respectfully submitted that the contention of the candidate that the candidates who secured less marks than him have been selected in Zone-I Non-local (OC) is not correct. In fact the cut of mark of Zone-I Non-local (OC) candidate is 246 marks.

5. It is respectfully submitted that in view of his less marks and rank only the applicant has not come up for selection and

has no legitimate grievance.

6. Having regard to the facts and circumstances submitted above, the OA deserves no consideration and it is prayed that the Hon'ble Tribunal may be pleased to dismiss the OA as devoid of merits".

Therefore, when APPSC has not taken the plea that the respondent was not considered on the ground that he did not furnish the Certificates. Hence it is not open for them to advance such an argument before the Tribunal and the Tribunal was right in rejecting the said contention. But, now the fact remains that the petitioner not only falls under local category in Zone-I, as he secured 255 marks, but also on merits he is entitled for appointment. In such a situation the denial of appointment to the respondent is illegal and contrary to law. Apart from the grounds as observed by the Tribunal, even on question of merit also the respondent is entitled to be considered for appointment.

5. For the foregoing reasons, the Writ Petition is dismissed. No costs.

(G.BIKSHAPATHY, J.)

25th March, 2005.

SSR (P.S.NARAYANA, J.)

To

1 The Secretary, Andhra Pradesh Public Service Commission,
Gruhakalpa, Nampally, Hyderabad.

2 The Registrar, A.P. Administrative Tribunal, Hyderabad.

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